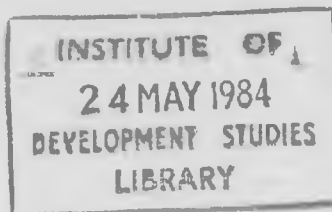


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AGRICULTURAL DEVELOPMENT IN LESOTHO:
THE LEGAL FRAMEWORK AND THE EXECUTIVE



(11)

URBAN AND REGIONAL PLANNING PROGRAMME

(6)

DEPARTMENT OF GEOGRAPHY

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RESEARCH REPORT V)

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"The Government have, on several occasions, passed laws through this House; but when it comes to implementation of the laws, they are evaded."

(From: Lesotho Parliamentary Debates, March 24, 1969.)

| <u>Table of Contents:</u> | <u>Page</u> |
|--|-------------|
| Preface | |
| Introduction | 1 |
| Chapter 1 Agricultural Development | |
| objectives | 7 |
| 1.1 Introductory Remarks | 7 |
| 1.2 Lesotho First Five Year Development Plan (1970/71 - 1974/75) | 7 |
| 1.3 Lesotho Second Five Year Development Plan (1975/76 - 1979/80) | 9 |
| 1.4 The Blueprint for Action on Agricultural Development (1980 -) | 11 |
| Chapter 2: The Legal Framework: | 13 |
| 2.1 Introductory Remarks | 13 |
| 2.2 Law Regulating Land Tenure | 14 |
| 2.2.1 Customary Law and Land Tenure | 14 |
| 2.2.2 Statutory Law and Land Tenure | 19 |
| 2.3 Law Regulating Land Use | 32 |
| 2.3.1 Customary Law and Land Use | 33 |
| 2.3.2 Statutory Law and Land Use | 34 |
| 2.4 Law Regulating Marketing | 40 |
| Chapter 3: The Implementation of the Law: | 49 |
| 3.1 Introductory Remarks | 49 |
| 3.2 Law Implementation in the Field of Land Tenure | 49 |
| 3.3 Law Implementation in the Field of Land Use | 53 |
| 3.4 Law Implementation in the Field of Marketing | 58 |

Table of Contents Cont'd:

Page

Conclusion

60

Table of References

65

Chronological Table of Laws

71

INTRODUCTION

Promoting development involves a variety of disciplines; one of them being law.

The specific function of the law is associated with the assumption that legal rules are binding. Everybody is supposed to obey the law; legal rules claim obedience. This obedience is required of all citizens, including representatives of government.

Consequently, through the structuring of development processes and institutions, the law may play a crucial role in the achievement of development:

- If planning is given legal support, the administration may feel more obliged to commit itself to the achievement of the objectives;
- in planning a variety of individuals, bodies, ministries, departments and other governmental agencies play a role. Legislation facilitates the controlled sharing of powers and division of duties between all those involved;
- to ensure people's participation in the planning process, the creation of legal rights to that effect is a condition sine qua non.
- legislation may direct citizens to behave as required to achieve planning objectives.

However, as actual practice has shown, the function of the law in the achievement of planned change leaves much to be desired.

From the literature on this subject several reasons emerge:

- Frequently law, meant to facilitate the bringing about of change, is opposed by influential groups. These groups may prevent the making of such law, or may effectively manipulate its implementation. Laws purporting to curtail elite privileges are often not enforced;
- Legislation issued to direct social change often appears to be 'borrowed' from the industrialized countries, which makes it alien to developing countries: Those who are responsible for drafting legislation find it much easier to borrow and adapt rather than create a new original scheme of legislation. Time, inexperience and sometimes laziness work against originality.
The problem is aggravated by the many expatriates working in these countries, and by the fact that many of their fellow workers have received part of their education abroad;
- Donors may dictate certain legal measures, leaving the administration with the task of implementing change with which people fail to identify;
- The law maker usually works in isolation, which means that the groups which are later affected by the change-oriented law have no opportunity to influence the law making process. Thus legislation is enacted that is likely to be incompatible with the socio-economic conditions with which people try to cope. Such tension can tremendously affect compliance with the new rules, because people may consider obedience not in their interest.
- Often, change-oriented legislation seeks to bring about compliance through punishment. However, sanctions to force people into new behaviour are likely to be ineffective.

They pose not only a heavy burden on scarce manpower and financial resources, but are a threat to the legitimacy of government as well: imposing punishment on a large scale makes the opposition against the new law quite obvious, and may, in unstable political circumstances easily lead to considerable unrest;

- The communication of law may be a problem that is hard to tackle. Developmental laws prescribe per definition new ways of doing things. Consequently, the administration has to ensure that the people are informed about the law, preferably in such a way that it encourages people to comply. The constraints are many: Often legislation appears in the English Language only, drafted in a way that is incomprehensible to the ordinary man; newspapers do not reach the remote areas and radios are not always widely owned; institutions to explain the law to the people are virtually absent.

- The shortage of qualified manpower may be a serious hindrance to the effective implementation of the law, and is often made the scapegoat by many administrations. However, as pointed out by Seidman (1978), enlarging bureaucratic powers does not necessarily mean an increase of the potential for change by the citizenry. In order to actually induce people's compliance with change-oriented rules, the administrative framework should be of a participatory nature, which is obviously not the case in many countries.

The foregoing shows that the efficacy of developmental law is affected by both the (non) availability of proper legal instruments, and by the (non) implementation of these.

Not only with regard to law implementation, but also concerning the creation of law, the executive branch of government - the administration - plays a dominant role. In most countries the administration works together with Parliament in law making, but it is usually the executive which takes the initiative. One of the main reasons is that it is the executive rather than Parliament which has the manpower and experience needed for the preparation and drafting of legislation.

After drafting the principal law the Minister concerned brings it before Parliament, which is left with the task of enacting it. Thus by being responsible for the preparation of draft legislation, the administration is in a good position to control the making of law. Even more important, though, is the now very common phenomenon whereby the principal legislation leaves part of the job of law making to the administration, thus enabling the Minister to promulgate regulations (subsidiary legislation) in a number of fields provided for under the act.

Since the late 1960s it has been the policy of the Lesotho Government to transform agriculture from a semi-subsistence to a more commercially oriented sector.

To this end, from 1970 onwards the administration has formulated policy objectives in three subsequent five year development plans aiming at increasing the production output levels of crops and livestock. It is generally recognized that in order to accomplish such a goal, adequate land tenure, land use and marketing systems, among other aspects, are crucial pre-conditions.

The main purpose of the present report is to review what use the administration has made of the law as a developmental instrument - both by law making and law implementation - to achieve the objectives in the above mentioned fields, and what is to be expected in this respect in future.

To this end, data have been collected from various sources: Customary law, acts and complementary subsidiary legislation in the fields of land tenure, land use and marketing have been analysed; literature on planning and on developmental law has been studied, as well as publications dealing with the laws of Lesotho. Furthermore, numerous papers and reports, including development plans on the agricultural sector, have been consulted. At various occasions over the last three years government officials have been interviewed in order to complement the secondary data sources and to test preliminary conclusions.

The discussion in this report is organized as follows:

Firstly, an inventory will be presented of the development objectives from 1970 onwards in the field of land tenure, land use and marketing as indicated by the First Five Year Development Plan (FFYDP), the Second Five Year Development Plan (SFYDP), and the Blueprint for Action on Agricultural Development (the Blueprint), which replaces the Third Five Year Development Plan as far as agriculture is concerned.

Secondly: A review will be presented of the laws constituting the legal framework for land tenure, land use and marketing in 1970, and the attempts by the executive during the 1970s and early 1980s to make the legislation base more suitable for the achievement of the objectives as laid down in the development plans.

Thirdly: The actual implementation of the instruments made available by law to achieve objectives in the field of land tenure, land use and marketing will be analysed.

Following this subdivision, the chapters of the report will deal with agricultural development objectives, the legal framework and the implementation of the law respectively.

CHAPTER 1

AGRICULTURAL DEVELOPMENT OBJECTIVES

1.1. Introductory Remarks.

As indicated earlier, the principal development objective of the seventies and eighties in the field of agriculture is an improved output in terms of both quality and quantity. To achieve this, major prerequisites to be fulfilled are an adequate land tenure system, an appropriate land use system and a marketing system stimulating farmers to embark on agriculture on a commercial basis. It is with regard to these three aspects that the national development plans of the seventies and the eighties are reviewed in the following.

1.2 Lesotho First Five Year Development Plan (1970/71-1974/75)

The plan showed concern for the suitability of the land tenure system, where it stated that "The land tenure system appears to be responsible for a number of major obstacles to the modernisation of agricultural production". In particular the system was blamed for impeding the consolidation of scattered land holdings in larger units, for making the farmers reluctant to improve the land, as there is no security of tenure, and for making the extension of agricultural credit difficult because of the lack of individual ownership.*¹ With regard to land use, conservation was made the big issue. Concerning range management the plan stressed the need to bring down the stock numbers. An idea of the extent of overstocking was given by the following figures:

*1. FFYDP, pp. 9, 10.

"With the present depleted pastures, one unit of large stock would require about 10 acres. This gives room for about 25.000 units of large stock, as compared with approximately 420.000 existing units. With respect to small stock the situation is even worse. To total amount of small stock should be about 1.250.000. However, the actual number seems to be almost twice as much".

The plan recognized the serious consequences of overgrazing for erosion control, and made it the "ministry's long run policy to limit the stock numbers to the carrying capacity of the land."¹

For Lesotho's cultivated areas the plan emphasized the need of reestablishment of fenced and grassed waterways.²

In the field of crop growing, an extensive use of fertilizer should be realized;³ every effort would be made to improve irrigation farming;⁴ an increase in mechanised cultivation was considered desirable.⁵ The total acreage for maize and sorghum would be reduced, and the land resources thus released would be allocated to cash crops.⁶

Reviewing the objectives of marketing, it becomes obvious that the key aspect was the establishment of a parastatal marketing system for livestock and livestock products to assure maximum prices to producers.

*1. FFYDP, pp. 84-85

*2. SFYDP, p. 74.

*3. FFYDP, P. 60.

*4. FFYDP, p. 57.

*5. FFYDP, p. 67.

*6. FFYDP, pp. 56,57.

For that purpose the establishment of the Livestock Marketing Corporation (L.M.C.) was announced. The plan proposed that the L.M.C. should have the sole right of purchase, importation and exportation of livestock. The marketing of wool and mohair, hides and skins should also be exclusively in the hands of this parastatal. Other objectives in the field of marketing were an improved classing and grading of wool and mohair, and a more selective importation of livestock in order to improve quality.*1

1.3. Lesotho Second Five Year Development Plan (1975/1976-1979/1980).

This plan was much more reluctant to effect change to the traditional land tenure system. Defended against the attack as unsuitable for economic development, the system was said to have demonstrated considerable flexibility, and to have prevented the development of a landlord class and the ownership of large tracts of land by expatriates, as was the case in some other African countries.*2 According to the plan, the system ensured that the use of land was widely and equitably shared, and supportive of social justice. The plan required that "any modifications which may be necessary to secure the benefits of modern technology must not destroy the desirable distributive characteristics of the system".*3

In the field of land use the objectives of the FFYDP were largely retained, with the exception that with regard to crop production the emphasis on irrigation was dropped. Instead "(...) the creation of systems of dryland cropping which are more productive than those now in use" was given priority.

*1. FFYDP, pp. 98-100

*2. SFYDP, p. 3

*3. SFYDP, p. 20

The plan directed area based projects to carry out research and development trials with regard to these new systems, including fodder and forage crops as part of improved rotations, horticulture, and new crops like potatoes and asparagus.*1

Conservation again was the big issue: Conservation measures should be made part of livestock and crop farming.*2

Conservation tree planting would be undertaken.*3 The plan claimed that a considerable amount of land "which is now cultivated annually could be put to better use under perennial fertilized grass".*4

Range management and grazing control, recognised as essential to soil and water conservation and increased livestock productivity, were given high priority: "(...) in the mountain areas, new systems of range management and of range development (...) will be developed (...) "Government-led improvement to range management will involve enforceable regulations of timing, type and numbers of stock on designated areas; demarcation of areas for exclusive use of livestock associations within area-based projects; closing of excessively overgrazed areas with close control after recovery (...)." *6

In the field of marketing the plan announced that the Produce Marketing Corporation (P.M.C.), established in 1973, should have overall control over crop marketing at village and area level.*7 The activities of the L.M.C. should have to be extended by the marketing of eggs, poultry and milk, and the operation of an abattoir.*8

*1. SFYDP, p. 81

*2. SFYDP, p.64

*3. SFYDP, p. 114

*4. SFYDP, p. 114

*5. SFYDP, p. 65

*6. SFYDP, p. 101

*7. SFYDP, p. 92

*8. SFYDF, p. 108.

1.4 The Blueprint for Action on Agricultural Development (1980 -)

This Blueprint, replacing the chapter on agriculture of the Third Five Year Development Plan, arose from the Multi-Donor Agricultural Sector Conference held in October 1980.

Concerning land tenure, the major objective is the implementation of the new land law - the Land Act 1979 complemented by its subsidiary legislation - across the country: "(...) the provisions of the Land Act 1979 and its subsidiary legislation (...) will be applied with vigour where necessary to gain the land reform objective".*1

The plan mentions the designation of land as a selected agricultural area through which land may be allocated to individuals or developed by collective action of villagers within the area. The Blueprint stipulates that the decision on land allocation and on the use of these areas is to be taken by new land committees, some 30 in number, under the chairmanship of chiefs*2. According to the plan the government will ensure that in the application of the land reform measures, no one is dispossessed of land, however small.*3

With regard to land use, the Blueprint points out that for crop cultivation the emphasis is to be on diversification to expand the scope of farming activities and to increase earnings; new crops adaptable to the soil and climate will be introduced. Labour intensive cultivation will be encouraged, and mechanization will be promoted with the necessary safeguards.*4

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- *1. Blueprint , p. 8
 - *2. Blueprint , p. 17
 - *3. Blueprint , p. 17, 18
 - *4. Blueprint , p. 6

The plan accords continuing priority to the carrying out of conservation measures: "...restoration of land lost by deterioration and maintenance of its potential carrying capacity are of paramount importance". Farming practices should be followed, and livestock numbers must be reduced.*1

The plan supposes forceful application of the Range Management and Grazing Control Regulations 1980 to result in new practices of using the range lands, thus leading towards the objective of profitable pastoral farming.*2 According to the plan, the implementation of these regulations will be in cooperation with Village and District Committees.*3

With regard to marketing the main objective remains the strengthening of governmental marketing institutions and services.*4 For this purpose the establishment of a new Apex Co-operative body is announced, which will make use of the procurement and marketing infrastructures established by the P.M.C., B.A.S.P. and Co-op Lesotho. Livestock and livestock products marketing will also come under the jurisdiction of this new marketing organization.*5

It is interesting to note that in the FFYDP no mention is made of new legislation needed to facilitate the achievement of development objectives. In the SFYDP the only reference is to "enforceable regulation of timing, type and numbers of stock on designated areas", which will be introduced in order to improve range management.

At the time the SFYDP came into operation, Part III of the Laws of Lerotholi, regulating range management and grazing control in great detail, have been in operation for 16 years. Apparently the government had accepted the fact that effective implementation of these Laws was impossible.

*1. Blueprint, p, 8.
*2. --- p, 9.
*3. --- p, 16.
*4. --- p, 7.
*5. --- p, 20.

CHAPTER 2

THE LEGAL FRAMEWORK

2.1. Introductory Remarks

During the 1970s the legal framework for agricultural development consisted not only of rules of statutory law, but included rules of customary law as well.

Sesotho customary law is largely unwritten. Among the written sources the Laws of Lerotholi is the principal one. These laws have been amended on several occasions, the most recent edition dates from 1959.

In the present report references to the Laws of Lerotholi refer to this latest edition.*1

In the field of agriculture, the Laws of Lerotholi contained provisions dealing with land tenure in Part I; Part II and Part III held rulings on land use.

*1. As quoted from Duncan, Sotho Law and Customs, 1960.

2.2. Law Regulating Land Tenure

The customary law administered by chieftainship remained the paramount legal basis for land tenure throughout the seventies, although statutory legislation was introduced in the sixties and continued to be issued in the seventies and eighties.

In the following, the traditional land tenure system as developed under customary law is first examined.

Secondly the Land (Procedure) Act 1967, the Land Procedure (Amendment) Bill 1973, the Land Act 1973 and the Land Act 1979 are reviewed.

2.2.1. Customary Law and Land Tenure

Studying the Laws of Lerotholi provides only a limited part of the information on the traditional land tenure system. Various volumes and monographs provide additional written evidence, more recent ones being 'Chieftainship and Legitimacy' (1975), written by Ian Hamnett on the basis of research conducted at various times between 1964 and 1968, and 'Families Divided' (1981), by Colin Murray, for which the material is drawn mainly from fieldwork done in the years 1972-4.

Following Sheddick (1954), the traditional land tenure system may be explained in terms of 'rights of usufruct' and 'rights of administration'.

The usufruct rights included rights to arable land and to grazing areas. The general feeling on the latter is that they were communal in character; rights to arable land were allocated to heads of particular households, thus being individual in character.

In principle every male adult Mosotho held a right to arable land to meet his subsistence needs, provided he met certain obligations. The obligations boiled down to membership of the community where the land was situated (the main thing being payment of tax to the chief) and married status. It has been a long time since the right to land was explicitly stated in the Laws of Lerotholi. The 1903-version provided for a minimum entitlement of three fields. Responding to changing circumstances the 1922-version did not hold this entitlement anymore, and mentioned instead the right of the chiefs to allocate three fields to their subordinates. The 1946-version in its turn left out the stipulation of three fields, and so did the 1959-version. In consequence, to have three fields allocated represented the ideal situation in the seventies, which was not to be reached in one allocation anyway. Many however had to do with less or with none at all.*1

By customary law, land could not be disposed of. The allocation was made for life, on condition that the holder did not remove from the area without permission of his chief and his household, used the land in accordance with the customary law, and acquired not more land than necessary from a subsistence point of view. Leaving to work in the Republic of South Africa and in Maseru was not considered as removal as long as the landholder did not fail in his allegiance to his Chief, and members of the family stayed behind to cultivate the land.

*1. The 1970 Census of Agriculture Report (p. 30), provided a percentage of 12.1 of households without land. The Report of the Lesotho Pilot Survey on Population and Food Consumption. (p. 19), May 1973, showed that 23% of the rural households were landless at the time.

However, this feature of the traditional land tenure system did not necessarily make impossible the consolidation of fragmented land holdings into larger units: Hamnett (1975, P. 74) reports on sharecropping arrangements leading to large defacto holdings.

Under the Laws of Lerotholi land was not an inheritance. On the death of the holder - which could be the father or the mother, who ever died last - the land reverted to the control of the Chief for reallocation, although provisions had to be made for minor children during the period of their minority.*¹ However, adult sons were given a legal preference in the reallocation of the lands which had reverted to the Chief after meeting the dependents' needs.*² Thus, the Laws of Lerotholi provided for 'quasi-inheritance'; enabling a family to remain in possession of their lands over long periods of time. Nevertheless, in practice lands were commonly handed on from father to son, bypassing the mechanism of reversion and reallocation. According to Palmer and Poulter (1972, p. 176) "This procedure is adopted largely as a result of the abuses by chiefs and headmen of their positions in re-allocating lands to their favourites as soon as they revert". As pointed out by Murray (1981, pp. 72, 73) this 'inter-generational transmission' as he calls it "(...) can usually be made only after the marriage of a son, and typically occurs at the stage in the developmental cycle when the father has ceased to migrate himself. (...) At the same time,

*1. Laws of Lerotholi, Part I, section 7(5)(a)

*2. Laws of Lerotholi, Part I, section 7(5)(b)

some provision must be made for his wife, for a widow is entitled to retain two lands following her husband's death and these only become available for re-allocation after her own death. These arrangements sometimes create conflicts between iblings who, in competition for their fathers' lands, also share responsibility for the maintenance of their mother".

Under customary law, the rights to land did not imply exclusive use; after the harvest the fields were open to the community for grazing. However, this principle was abandoned in many places, in adaptation to the growing of wintercrops (Maane and van de Lugt, 1975 p. 11) and to horticulture (van de Geer and Wallis, 1982 p. 83).

Under the traditional land tenure system, the rights of administration were in the hands of the Chieftainship. The Laws of Lerotholi imposed on the Chieftainship as a whole the duty to see that land was allocated fairly and impartially; the actual land allocating power being with the lower chiefs and headmen having jurisdiction.*1 According to these Laws, the chief or headman was obliged to inspect the lands allocated by him frequently, and he was given the power to revoke land from people "who in his opinion have more lands than are necessary for them and their families' subsistence and grant such lands so taken away to his subjects who have no land or insufficient lands".*2

*1. Laws of Lerotholi, Par I, section 7(1)

*2. Laws of Lerotholi, Part I, section 7(2)

Another reason for deprivation was a farmers' failure to cultivate his land for two successive years, through continued absence or insufficient reason.^{*1} The Laws of Lerotholi further instructed the chiefs on the retention of lands by widows,^{*2} and on allocation of land to minors and other sons on the death of their parents.^{*3}

The extent to which the Chiefs actually made use of their power to deprive people of their lands is uncertain; views held on this vary considerably. Hamnett (1975, p. 76) formulates as his opinion "(...) grounds of deprivation leave much room for actual or felt injustice, and much more scope for manipulation by chiefs (...) land holders do not feel secure, and this feeling is amply justified". Murray (1981, p. 71) observes: "Although the provisions on revocation are seldom invoked, they represent a degree of insecurity since they afford grounds for arguments in a dispute whose origin may lie elsewhere". According to Eckert (1980, pp. 5-7), discussing section 7 (2) of the Laws of Lerotholi, "Many other examples could also be cited of innovations that carried farmers beyond the threshold of subsistence yet were not rewarded by loss of fields". With regard to the use of section 7(3) of the Laws he remarks: "(...) there is no documented evidence that this provision is ever used to revoke allocations and reliable Basotho informants suggested that it is a rare occurrence. Nevertheless there is some sense of insecurity among farmers concerning their tenure in land use rights. Testimony received by the Basotho National Council (1964), the University of Chicago Team (1963) and the Ministry of Agriculture at

*1. Laws of Lerotholi Par I, section 7(3)
*2. --- section 7(4)
*3. --- section 7(5)

the 1979 Farmers's Conference attest to this fact. It is possible that farmers perceive the problem as more severe than it really is".

2.2.2. Statutory Law and Land Tenure

At the time the FFYDP came into operation, the Land (Procedure) Act 1967 was in force. The major objective of this Act was to give the people some control over the land allocating power of the Chiefs, thus decreasing their feelings of insecurity.

Under that Act a pitso (public meeting) was to be held for the election of an advisory board for all the adult inhabitants of the chiefs' area of jurisdiction. At the same time however, the Act fixed the quorum of such a pitso at ten persons,^{*1} which "opens the way to the chief calling 10 of his friends together" (Lesotho Parliamentary Debates, March 9 1967).

The Act required the Chief to consult with his board prior to allocation or deprivation of land,^{*2} but the Chief was not obliged to follow the advice of the board.

The Act further formalized the land allocating procedure by the following provisions:

- An application for an allocation of land had to be in writing;
- A hearing had to be held in which the applicant was entitled to appear to support his case;^{*3}

*1. Land (Procedure) Act 1967, section 3(1)

*2. --- , section 3(3)

*3. --- , section 8(1)

- The decision of an allocation had to be in writing, indicating the grounds on which it was give; *1

- A record of the proceedings on every application had to be kept; *2

- In case of revocation, grounds for the decision had to be given in writing; *3

The Act allowed an aggrieved party to appeal to increasingly higher levels of Chieftainship and ultimately to His Majesty the King. *4

The executive was given some authority, by allowing the Minister of Agriculture (either in person or through his representatives) to advise on matters of land allocation and deprivation. However, this advice - through which allocation in accordance with principles of landuse planning was to be realized - was not binding; the chief had to "consider" it. *5

Under this 1967 Act, the land allocating power was still firmly in the hands of chieftainship. Nevertheless, full implementation of the regulations could contribute substantially to a more satisfactory exercise of that power. Remarkably, the Act was silent on enforcement, which permitted the chief to keep on performing as if they were not aware of the new regulations.

In 1973, the SFYDP being three years in operation, the Minister of the Interior undertook an extraordinary action by bringing before Parliament the Land Procedure

*1. Land (Procedure) Act 1967, section 8(6)
*2. --- section 8(6)
*3. --- section 9(2)
*4. --- section 10
*5. --- section 6

(Amendment) Bill 1973, providing for the establishment of area Development Committees, empowered to issue binding advices to the chiefs with regard to land allocation. These committees were to be composed of seven members; four to be elected by the people, three to be appointed by the Minister of Interior. This legislation intended to reduce the absolute land allocating power held by the chiefs under customary law to a supervisory position. Even worse, this Bill "will enable the committee to question the chiefs on the number of lands possessed by each chief" (Lesotho Parliamentary Debates, October 17, 1973). Not surprisingly, Chieftainship opposed this Bill fervently, and on November 1st 1973, it was withdrawn.

The Minister of the Interior came quite soon with a new initiative. On November 9th, Parliamentary deliberations on the Land Bill 1973 started. This Bill was enacted, and in March 1974 the Land Act 1973 came into operation, replacing the Land (Procedure) Act 1967. Compared to the opposed Land Procedure (Amendment) Bill 1973, the Land Act 1973 made less dramatic modifications to the land tenure system. The Development Committee provided for under the Act was an advisory body; the power to allocate the land remained in the hands of the chiefs. Nevertheless the Act allowed for stricter control over this power than the Land (Procedure) Act 1967 it replaced. Significant improvements in this respect were:-

- On appeal, commoners were given a say: The senior chief deciding on appeal was bound to consult his Development

Committee; *¹ the ultimate appellate decision lay outside the ranks of Chieftainship to the court having jurisdiction; *²

- An aggrieved person was permitted to take the Chief to court, for various reasons including:

- The Development Committee was not consulted;
- Grounds for the decision on allocation or deprivation were not given;
- Procedures by which the decision was to arrive at were not observed. *³

- The Act also strengthened the authority of the executive: The Minister of the Interior was entitled to give - in person or through his officers - binding directives to the Chief which overruled the advice of the Development Committee. *⁴

The Minister was permitted to extend his control over land allocation quite substantially; the Act empowered him to make regulations "prescribing allocations that may be made and in what way". *⁵

The Land Act 1973 itself did not establish the Development Committees, but left it to the discretion of the Minister of the Interior to provide for that by regulation.

| | | |
|-----|---------------|--------------------|
| *1. | Land Act 1973 | , section 8(3) |
| *2. | --- | , section 10(1)(b) |
| *3. | --- | , section 18 |
| *4. | --- | , section 6(3) |
| *5. | --- | , section 19(d) |

In fulfilling this authority the Land Regulations 1974 were promulgated. These regulations provided for the election, composition and functioning of Development Committees, which were rather similar to those laid down in the Land (Procedure) Act 1967. A new feature was the membership of three persons to be appointed by the Minister of the Interior, as "(...) experts on how to use the soil to the best advantage (...)" (Lesotho Parliamentary Debates, November 9, 1979)

The statutory legislation in the field of land tenure that was brought into operation in the early seventies intended to correct some of the most apparent defects of the traditional land tenure system; a purpose for which earlier the Land (Procedure) Act 1967 appeared to be ineffective. The legal instruments made available were substantial, both for the curbing of alleged chiefly misuse of power, and to make allocations of land more in line with principles of land use planning. However, in view of the FFYDP wider changes seemed appropriate: Although the plan failed to indicate what precise changes were to be made, by blaming the traditional land tenure system emphatically for impeding modernisation of agricultural production, the executive implicitly advocated profound and wide ranging changes of the system.

Admittedly, by bringing before Parliament the Land Procedure (Amendment) Bill 1973 a remarkable attempt was made to take the land allocating power from the chiefs and give it to a more popularly controlled institution. But still, the scope was rather limited.

It is interesting to note, that where conservative change to the traditional system seemed not to be in line with the the FFYDP (1970), it must be considered well in tune with SFYDP, brought into operation in 1975.

For this radical change in policy the executive may be blamed for being inconsistent rather than for being irrational. As indicated earlier, several authors on the traditional land tenure system pointed at the fact that the system might have been far less of an impediment to modern agriculture than was perceived by those who were responsible for the drafting of the FFYDP.*1

In the light of the reluctance demonstrated by the administration in the SFYDP with regard to accepting changes to the traditional land tenure system, the Land Act 1979 came as a big surprise.*2 "If implemented fully, the Land

*1. See also Mashinini, Land Tenure and Agricultural Development, U.R.P.P. Report No. VI Roma 1983

*2. An explanation for the introduction of this new law is now provided. In 1971 the Government was interested in reforming land tenure in the urban areas and the Minister of the Interior in 1973 introduced to Parliament a Bill enacted in that year as the Administration of Lands Act 1973. Included in that law (which was never brought into operation) was a legal device to allow the executive (the Minister of the Interior) to extinguish former rights to land (allocations) with the object of replanning the land use and regranting new rights over the replanned land, usually back to the original holders. Such land was referred to in that law as a selected development area. In 1978 the Executive instructed the Law Office to produce a Land Bill comprising a consolidation of the Land Act 1973 and the Administration of Lands Act 1973. This Bill was considered by the Executive who further instructed the Law Office to introduce a variety of changes to the 1978 Bill including two big reforms being (1) the power to allocate land in the rural area passing from Chieftainship to a committee of persons led by the chief having jurisdiction and (2) the introduction of the selected development areas procedures of the Administration of Lands Act 1973 to the rural sector with development specifically meaning modern sector agriculture. Thus the 1979 Act introduced Selected Agricultural Areas provisions to allow the Executive (in this case the Minister of Agriculture) to introduce modern land tenure principles to rural areas.

Act 1979 will prove the most fundamental element structuring rural society and agricultural development throughout the balance of this century" (Eckert, 1980 p. 4).

The Land Act 1979 subdivides the agricultural areas into three categories:

- Areas where land is held under allocation.
- Areas where land is held under lease.
- Areas where land is held under licence.

Areas where land is held under allocation

For these areas, the main concern of the Act is to remove a number of obstacles, posed by customary law to farmers in actually meeting their subsistence needs. Several characteristics of the traditional land tenure system are preserved, though.^{*1} This is most clearly expressed through the type of use right to which the allocation refers, namely the traditional right for subsistence farming. As under the Laws of Lerotholi, this right cannot be sold, nor is it exclusive so that the traditional communal grazing right can still be imposed on the land.

The departures from the traditional land tenure system are the following:

- Land is made an inheritance,^{*2} to stimulate farmers to increase the investment in improvements in land.

*1. The customary law is superseded by the Land Act 1979, as pointed out in section 3(3) of the Act: "where the customary law is inconsistent with this Act, this Act shall prevail".

*2. Land Act 1979, section 8.

The Act prescribes the passing of the right to land to one single heir.*1

Through this provision the Land Act 1979 seeks to put an end to further subdivision of land; holdings are frozen at 1979-levels, making new households essentially landless.

- Legal claim for compensation is prescribed to make up for the loss of investment in improvements of land, where land is taken on grounds of public interest.*2

- The land allocating power is conferred on a new authority. The power to grant title to land "shall be exercised by majority decision of the Land Committee established for the area of jurisdiction, of which the Chief having jurisdiction shall be chairman 'ex-officio', or of such other Land Committee as the Minister may establish under section 18"*3

At present the Land Committee referred to in the Act is the Development Committee as established under the Land Act 1973. These existing committees number 1084 on Paper.*4

*1. Land Act 1979, section 8(2)(a)(b)

*2. Land Act 1979, section 15.

*3. ---, section 12(2)

*4. In fulfillment of the requirement of the Lesotho 1966 Constitution (section 95) that prior to allocation and deprivation of land the chief must consult with an advisory board elected from within his area of control, the Land (Procedure) Act 1967 established such boards. Under the Land Act 1973 again land advisory boards, the Development Committees, were established.

As the number of chiefs and headmen authorized to allocate land amounts to 1084, the number of Land Committees at present should be the same. However, it is assumed that the system as provided for by law did not fully develop, thus the actual number of these committees is supposed to be substantially lower.

According to the Blueprint, the new committees - under the chairmanship of the chiefs - will be some 30 in number. The Land Regulations 1980, issued by the Minister of Agriculture under the Land Act 1979, contain several provisions on Land Committees, but are silent on number and composition of new committees. This might be an indication that the creation of the new land committees is a matter of the future rather than of the present time.

- The Land Regulations 1980 permit the deprivation of land in case the land is abused through overgrazing; refusal or inability to combat solid erosion; lack of cultivation of arable land for any period in excess of three years.*1

Because of this, instead of supporting the subsistence orientation of the traditional system, the grounds for depriving people of land are made instrumental in the control of erosion.

The Minister of the Interior retains the power held already under the Land Act 1973 to give binding directives on allocation and deprivation of land. But unlike under the previous legislation, he is now first to promulgate regulations in order to be able to make use of that power.*2 The Land Act 1979 extends the regulating power of the executive quite substantially in that the Minister of the Interior is empowered to make regulations to prescribe the allocations which may be made and the persons to whom they may be made, the grounds on which and the circumstances in which they may or must be made or revoked and generally

*1. Land Regulations 1980, regulation 3(h)

*2. Land Act 1979, section 12(2)

regulating the principles to which and the manner in which the Land Committees must exercise their powers.*1

Areas where land is held under lease

With regard to these areas, the Land Act 1979 provides for commercialized agriculture: The changes the Act allows to the traditional land tenure system are quite profound:

- The mobility of land is strongly encouraged, as the lease is capable of being sold or sublet.*2

An increased mobility of land may lead to the constitution of 'viable' farms' in the hands of 'progressive farmers', which many consider conducive to the production of marketable surpluses.

However, the Land Act 1979 does not pose restrictions on the accumulation of agricultural land. As a result, the land may concentrate in the hands of a few, worst of all in the hands of an absentee landlord class. Such a process would flagrantly contradict the SFYDP, which demands possible changes to the traditional land tenure system not to "destroy the desirable distributive characters of the system.*3

*1. Land Act 1979 section 18(a)

*2. Land Act 1979, section 35(1)(b)

*3. Of note, the distributive characters of the traditional land tenure system appeared not as favourable as perceived by those drafting the SFYDP. Eckert (1980, p. 7) points out that "Recent research has constructed per capita data from the 1970 Agricultural Census to show that inequality in land distribution is much greater than conventionally believed and that figures given in the Second Five Year Plan do not provide an accurate picture (LASA, 1978)".

It would also be in great tension with the Blueprint, where it is stated that "The Government will ensure that the benefits from development are equitably distributed, commensurate with the efforts of its people".

However it should also be noted that control over the aggregation of residential land in the rural sector has been introduced and it is assumed that when modern sector agriculture develops the existing legislative control to limit land holdings will similarly be applied to agriculture to ensure an equitable distribution of such land.

- The transferability and exclusive use^{*1} provided by a lease is considered advantageous for the obtaining of agricultural credit.
- Offering the lessee the exclusive right to use the land, the law has provided the executive with a tool to promote the enclosure of land.
- The security of title is considered very high. Before the term of the lease expires the Minister of the Interior may only terminate the right if the lessee has not fulfilled the conditions of the lease^{*2}; the land is required for a public purpose^{*3} the land is declared as a selected development area^{*4} (area set aside for certain purposes of urban development). In the two latter cases the aggrieved farmer has a claim for compensation.

The normal duration of the agricultural lease has yet to be fixed in subsidiary legislation that still has to be promulgated.

*1 Land Act 1979, Section 35 (1) (a)
*2 _____, Section 42 (1)
*3 _____, Section 54 (1)
*4 _____, Section 44

- For the administration the conditions under which the lease is to be granted form a prime instrument for land use planning. These conditions may be used to control the use to which the land is put (grazing or cultivation); what agricultural practices are applied; what crops are to be grown, in line with what is proposed in the Blueprint. What can be achieved through this instrument under the Land Act 1979 is to a great extent similar to what the Land Husbandry Act 1969 allows for. However, as the Ministry of Agriculture did not issue the statutory conditions for the agricultural lease as yet, little is known of what use of this instrument will be made.

An agricultural lease may be obtained in two ways:-

- a. By application of an individual holding an allocation^{*1} to the Commissioner of Lands.
- b. By establishment of a selected agricultural area by the Minister of the Interior, upon the recommendation of the Minister of Agriculture;^{*2}

The Act defines a 'selected agricultural area' as a area set aside for the development of agriculture by modern farming techniques.^{*3}

Following the declaration of land as a selected agricultural area all existing rights come to an end,^{*4} to be replaced by leases, granted on application.^{*5} Thus the executive (in person of the Minister of the Interior acting in consultation with the Minister of Agriculture)

*1 Land Act 1979, Section 11 (1)
*2 _____, Section 50
*3 _____, Section 2
*4 _____, Section 50
*5 _____, Section 51

is in the position to re-order land rights over land which has been restricted by or on behalf of the Minister responsible for agriculture into viable farming units. When it comes to reallocation, the Act gives a certain degree of protection to former holders of land, by stipulating that the Minister must pay the foremost consideration to them when granting leases, while in the case of refusal to grant reasons must be given.^{*3}

Interestingly, the Blueprint as a document of "proposed policy", explicitly rejects the dispossession of land in the context of land reform while, as just pointed out, the Land Act 1979 permits it.^{*4}

As an alternative to the compulsory dispossession of land, the Act actually provides for the following: Leases are issued to all former landholders who apply for such. As the lease is transferable, the administration can encourage small farmers to sell their leases for consolidation purposes. Also through exchange or sub-lease arrangements rationalized land holdings may be created, in the hands of those who have a real interest in farming. Another possibility is to deprive the farmers of their individual title to land, and grant the lease to a cooperative body in which the former land holders take part.

Areas where Land is held under licence:

From analysing the instruments the Land Act 1979 provides in order to achieve increased agricultural production, it appears that improvement of security received much attention: The inheritance of land, the compensation for loss of improvements in land, the lease - although that right may create a lot of insecurity as well for former land holders when a selected agricultural area is established -, the new deprivation grounds and perhaps

*3 Land Act 1979, Section 51 (2)

*4 Of note, the Blueprint was prepared without consultation with the Government Department responsible for operating the Land Act 1979.

also the removal from the Chieftainship of the allocating power; all contribute to a greater security of title. However, the efforts of the law maker in this respect fall full stop at the boundaries of Lesotho's urban areas where agricultural land is held under licence.^{*1} The licence, the third use right to land under the Land Act 1979, has the character of a permission. The right may be withdrawn any time on three months notice, without the licensee being entitled to compensation for improvements made on his land.^{*2} The right is non-transferable and non-inheritable. The amount of agricultural land held under these unfavourable conditions is rather substantial; the estimated percentage arable land of Declared Urban Areas^{*3} amounts to 5.2%.^{*4}

Most likely not many 'urban farmers' are aware of their insecure position: When the Land Act 1979 came into force the right granted to them under the traditional land tenure system - the allocation - automatically converted into a licence.^{*5} Thus these 'urban farmers' have been denied the right given to rural area farmers to apply for lease security.^{*6}

Such security can only be obtained in urban areas through the declaration of land as selected agricultural area.

2.3 Law Regulating Land Use:

A distinction between law regarding land tenure and law affecting land use is difficult to make; to a great extent the two aspect coincide.

As pointed out earlier, the Laws of Lerotholi contained in Part II and Part III important provisions aiming at an

*1 Land Act 1979, Section 28 (2)

*2 _____, Section 38 (2)

*3 Declaration of Urban Areas Notice 1980

*4 This according to estimates provided by the Land Use Planning Project (F.A.O. -S.I.D.A.) Lesotho, November 1983

*5 Land Act 1979, Section 28 (2)

*6 ----, Section 11 (1)

improved agricultural land use. In 1969, when the Weed Eradiction Act was brought into operation, the provisions on the eradiction of weed were repealed. The Land Husbandry Act 1969 also provides for the repeal of certain sections of the Law with effect from a date to be fixed by the Minister by Notice in the Gazette.*1 As that notice never was given, the rules and orders of the Laws of Lerotholi concerned never were repealed, although the greater part were superseded in 1980, with the promulgation of the Range Management and Grazing Control Regulations.

2.3.1. Customary Law and Land Use:

The Laws of Lerotholi held a great number of provisions dealing with land use.*2 In the following the most prominent rules and orders are reviewed in a condensed way:

The Laws of Lerotholi provided for the setting aside of Leboella (Leboella means an area set aside for the propagation of grass, thatching grass, reedbeds, treeplanting or rotational grazing). Grazing in such areas was forbidden except in special cases approved by the chief.*3

The construction of anti-erosion works through cultivated fields and pasture land, including meadow strips and inlets, dams, and fencing of badly eroded areas were regulated. These works were to be protected from ploughing, cultivation and grazing, and the individual land holder as well as village communities were obliged to maintain and repair the anti-erosion works.*4

The Laws gave detailed rules on the safeguarding of ploughing land against erosion, including a strict control over the turning of virgin land into ploughing land.*5

*1 Land Husbandry Act 1969, Section 10

*2 Laws of Lerotholi, Rules No.11, 26, 28, 31, and 32;
Orders No. 3, 4, 5, 5 (bis) 5 (ter)
and 13

*3 -----, Rule 11

*4 Laws of Lerotholi, Order 4

*5 -----, Order 5

The chief was obliged to revert cultivated land to grazing where serious erosion would take place regardless of conservation measures which might be applied.*1 The prevention of soil erosion caused by overgrazing was regulated in great detail, prescribing a sectional survey to ascertain the carrying capacity of each section of a grazing area plus a regular review of and a written record on this capacity; the issue of annually renewable grazing permits in accordance with the grazing capacity; subdivision of grazing areas for rotational grazing purposes.*2

Obviously the administration of these regulations on improved agricultural land use was in the hands of the Chiefs, although with regard to many aspects the Agricultural Officers were given an advisory position.

2.3.2. Statutory Law and Land Use:

As made clear in the foregoing, many provisions of the Land Act 1979 do not only influence land tenure, but also hold strong implications for the use that is made of the land.

Earlier, ten years before the bringing into operation of the Land Act 1979, the Minister of Agriculture brought before Parliament legislation to be considered of potentially great importance for improved land use: The Land Husbandry Act 1969.

The Land Husbandry Act 1969 itself is not more than a first step towards achieving improved land use: The Act allows for the regulation of a great number of aspects of land use by the Minister of Agriculture rather than regulating them itself.

*1 Laws of Lerotholi, Order 5 (bis)

*2 _____, Order 5 (ter)

This delegation of legislation has the advantage of flexibility, as the making of subsidiary legislation appears less of a burden on administrative resources than principal legislation. However, responding to very fundamental changes in policy which take place in a short period of time - like e.g. the switch from irrigation (FFYDP) to dry land cropping (SFYDP) - will always be a very challenging if not impossible task for the executive law maker.

The Minister of Agriculture "may make regulations which in his judgement ensure that land is employed in the most beneficial uses" *¹ The Land Husbandry Act specifically prescribes as major items to be regulated: soil conservation, range management; the use of which land is put, protection of water resources, irrigation of land, and reduction of the numbers of livestock.*²

With regard to the contents of the regulations, the Chieftainship is given influence: The Minister of Agriculture is required to consult with the Principal Chief or Ward Chief having jurisdiction over the areas for which regulations are being made.*³

For the achievement of the principal land use objective of the 1970s - soil conservation - as well as the others in the field of improved land use, the Land Husbandry Act 1969 provides the executive with regulating authority. Thus, in the early 1970s there was no need for the executive to change the legislation substantively, in order to give legal support to the proposed policies of development plans. It would have been sufficient if

*¹ Land Husbandly Act 1969, Section 4 (1)

*² _____, Section 2

*³ Land Husbandry Act 1969, Section 3

the administration had actually used its power to regulate various aspects of improved land used. In the Land Husbandry (Amendment) Act 1974, a preliminary step to that was taken. The Act limits the obligation for the executive to consult the Chieftainship by ruling that regulations with a general nature are exempt. As a result the executive has been allowed to act more promptly.

Despite the amendment, the Minister of Agriculture did not use the regulating power conferred on him by the Land Husbandry Act 1969 until 1980, when the Range Management and Grazing Control Regulations were promulgated. The regulations aim at the improvement of grazing lands; reduction of numbers of stock; improvement of quality of stock, and, although the title does not refer to it, safeguarding of land under cultivation against erosion. To accomplish these objectives, the following provisions are made:

- At village level, it is made the duty of the Chief, acting after consultation with the Agricultural Officer, to set aside land for 'leboella', that is for the propagation of grass, thatch grass and reedbeds, for treeplanting or rotational grazing".^{*1}

The Agricultural Officer may also take the lead,^{*2} and advise the Chief to set aside land.

In such area grazing is forbidden except in cases specially approved by the Chief.^{*3}

- Certain grazing areas are to be declared by Chiefs to be reserved for agricultural development.^{*4}

*1 Range Management and Grazing Control Regulations 1980,
Regulation 4 (1)
*2 _____ Regulation 4 (3)
*3 _____ Regulation 6 (1)
*4 _____ Regulation 9 (1)

Following such declaration, the Chief should divide the area into sections for the purpose of rotational grazing, after consultation with the Agricultural Officer.*1

The stocking rate of each Section is annually determined by the Agricultural Officer; and he and the Chief keep a written record of it.*2

On the basis of this stocking rate the Chief will grant grazing permits, renewable annually.*3

- At any time when the total number of stock in Lesotho exceeds the national aggregate stocking rate, measures are bound to be taken by the Agricultural Officers, to cull undesirable stock until the required number is attained.*4

Obviously, this legal instrument is not of importance for improvement of grazing lands only, but also aims at an improved quality of stock.

- Further improvement with regard to the latter is to be implemented by the Agricultural Officers and stock holders through the control of parasites in stock.*5

- The Chief is to ensure the safeguarding of ploughing land against erosion, as advised by Agricultural Officers.*6

Virgin grassland is not to be opened for cultivation without the written permission of the Chief.*7

| | | |
|----|----------------------|----------------------------------|
| *1 | Range Management and | Grazing Control Regulations 1980 |
| | | Regulation 9 (2) (c) |
| *2 | ---- | Regulation 9 (2) (a) (b) |
| *3 | ---- | Regulation 9 (3) |
| *4 | ----- | Regulation 10 |
| *5 | ---- | Regulation 11 |
| *6 | ---- | Regulation 13 |
| *7 | ---- | Regulation 13 (2) (a) |

Land that has been cultivated either in unsuitable places or unlawfully, should be ordered by the Chief to return to grassland; again on the advice of the Agricultural Officer.^{*1}

-Where the Agricultural Officer is to give his advice, this advice is binding on the Chief,^{*2} and to be complied with within thirty days.

What is interesting about this new legislation is that most of its instruments were already made available under the Laws of Lerotholi as shows from the foregoing. For the control of erosion only one new instrument is introduced; the culling of 'undesirable stock'.

With regard to implementation the position of the Agricultural Officer is made stronger by the Regulations although quite important duties such as the declaration of reserved grazing areas, the closing of certain areas for purposes of rotational grazing, and the granting of grazing permits remain fully in the hands of Chieftainship.

The Range Management and Grazing Control (Amendment) Regulations 1982 introduce a third authority in the field of implementation, namely the Land Committee under the Land Act 1979. As a result of these amendment regulations the Chief setting aside land for leboella is to cooperate with the Land Committee instead of the Agricultural Officer.

Finally it should be noted that the Range Management and Grazing Control Regulations 1980 were promulgated during the Donor's Conference on Agriculture, for obvious reasons; the regulations in draft had been available for some years and the administration had accepted the fact that effective implementation was impossible.

*1 Range Management and Grazing Control Regulations 1980,
Regulation 13 (3)

*2 ----- Regulation 14

For the achievement of improved land use, another Act dating from 1969 is of importance; the Weeds Eradiction Act 1969. This Act is strongly derived from the Laws of Lerotholi, which empowered the chief to order the people residing under him to eradicate noxious weeds,*¹ and made it a duty to destroy wild oats for every person on whose land they grow;*² the Chief was bound to summon matsema, public work parties, for this purpose. The Weeds Eradiction Act 1969 prescribes basically the same.*³ To make the Act a working proposition, the Minister of Agriculture first has to issue regulations which confer powers on chiefs and agricultural officers to enforce the Act.*⁴

*1 Laws of Lerotholi, Rule 26

*2 -----, Order 3

*3 Weeds Eradiction Act 1969, Section 4 (1) (2)

*4 -----, Section 11

2.4. Marketing:

For the achievement of the development objectives of the seventies in this field, the executive has at its disposal right from the start the Agricultural Marketing Act 1967.

The Act aims at the improvement (and therefore at the control) of not only marketing, understood as selling and buying and activities functionally involved in marketing like storing, transportation, preparation and processing, but also at the improvement of production of agricultural produce and supplies.

According to the Minister of Agriculture, bringing this law before Parliament, it is to "improve all the aspects of agriculture". (Lesotho Parliamentary Debates, May 12 1967) Like the Land Husbandry Act 1969, the Act is basically no more than a first step on the way of the accomplishment of its objectives: It is the regulations to be issued by the Minister of Agriculture under the Act that will prescribe how citizens are to behave in order to improve agricultural marketing (and production), and how such behaviour is to be encouraged or enforced by officials.

In 1973 the Act was amended. In contrast to the principal Act, the Agricultural Marketing (Amendment) Act 1973 actually does regulate a very important aspect of marketing, namely the trade in agricultural products. Three categories of licenceholders are introduced; dealer in livestock, hides and skins; dealer in farm produce; dealer in wool and mohair^{*1}. trading without a licence is forbidden^{*2}. A licence is given subject to whatever conditions the licencing authority thinks necessary^{*3}, and is annually renewable^{*4}. Licences are liable to suspension and cancellation.^{*5} Obviously, the conditions

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- | | |
|-----|---|
| *1. | Agricultural Marketing (Amendment) Act 1973, section 2(1) |
| *2. | -----, section 1(1)(a) |
| *3. | -----, section 6 |
| *4. | -----, section 3(2) |
| *5. | -----, section 7(1) |

linked to the licence are a prime instrument to accomplish policy objectives in the field of marketing.

In accordance with the prime marketing objective as laid down in the FFYDP, the administration brought before Parliament in 1973 two Acts establishing parastatal marketing organizations; the Livestock Marketing Corporation Act and the Produce Marketing Corporation Act.

These Acts, similar in content, confer very wide powers and impose substantial duties on the two parastatals.

Section 4 of the Produce Marketing Corporation Act 1973 requires the P.M.C. to:

- advise the Minister in all matters related to the production, preparation, processing and marketing of agricultural products and the marketing of agricultural supplies;
- regulate and control the marketing process for commodities and products as indicated by the Minister in pursuance of the Agricultural Marketing Act 1967;
- buy commodities and products and to arrange for their sale;
- secure the most favourable arrangements in respect of the country's economy for the purchase of commodities and products, their preparation, transport, storage, processing and sale;
- introduce quality standards and grading systems to which price differentials shall be related;
- secure domestic supply in relation to demand so as to stabilize as far as possible producer and consumer prices throughout the year and between different crop years.

Section 5 of the Act gives the P.M.C. -amongst many other rights and duties- the exclusive right to import,

export and to market products, provided the Minister of Agriculture approves of it.*1

The P.M.C. is to operate either by itself, or by or in association with other bodies or persons, or as managing agent or otherwise on behalf of other bodies and persons.*2 If the P.M.C. is allowed to carry out functions, as specified in section 5 of the Act, which also may be done by a Ministry, Department or other agency of Government, the Government of Lesotho may determine whether it is to be done by the Corporation or by one of the other bodies, or jointly*3.

From the previous section it appears that the law maker is rather ambivalent on what the institutional framework for marketing is to look like: On one hand the Acts allow the agricultural marketing to be made the full responsibility of the parastatals P.M.C. and L.M.C. only, on the other hand provision is made for a whole variety of other persons, bodies, ministries, departments and other governmental agencies to operate in the same field.

The politics of P.M.C. and L.M.C. may be controlled by government through general directions binding on these parastatals.*4

With regard to the L.M.C. this controlling power of government is even strengthened further in 1978: The Livestock Marketing Corporation (Amendment) Act 1978 imposes on that Corporation the obligation to comply with the general policy of government with respect to the purposes for which the Corporation is established.

The text of section 4 (b) of both Acts is a bit ambiguous, yet it appears to imply that for the actual handing over of the control and regulation of the agricultural marketing to these parastatals first the Minister of Agriculture is to issue

*1. Produce Marketing Corporation Act 1973, section 5 (2)

*2. -----, section 5 (1)

*3. -----, section 5 (4)

*4. -----, section 4 (2)

regulations under the Agricultural Marketing Act 1967. The regulating power the Minister holds under the latter Act is also the instrument to give legal support to the other objectives in the field of marketing, as laid down in the development plans.

From the foregoing emerges that by 1973 a significant amount of legislation, approved and passed by Parliament, allowed for the development of a marketing system which was (and still is) considered conducive to agricultural production according to the development plans.

However, with these Acts not all the requirements with regard to legislative action were met: Complementary subsidiary legislation was needed: regulations to be issued under the Acts by the executive.

In the following section, four areas are distinguished in which the executive undertook such action indeed.

Firstly, the establishment of (semi) governmental control over trading in agricultural produce will be reviewed. Secondly, attention will be paid to the issue of protection of farmers against price-exploitation. Thirdly, the protection of certain local farm produce from competing imported produce will be discussed, while fourthly the preparation of agricultural produce is reviewed.

An important step towards governmental control of trading in agricultural produce was made through the 1973 amendment of the Agricultural Marketing Act 1967, which, as pointed out already, prohibits such trading without a licence.

The Agricultural Marketing (Trading) Regulations 1974 are a refinement of the existing rules. The regulations set different terms for each of the three categories of agricultural trading licence earlier introduced, provide for a

*1. Agricultural Marketing (Trading) Regulations 1974, first schedule

stricter policy with regard to imposing conditions on these licences,^{*1} and standardize the licencing procedure.^{*2}

The control of agricultural trade through the agricultural licence is with the Ministry of Commerce and Industries.

From 1975 onwards, regulations were promulgated placing substantial parts of the trade in agricultural produce in the hands of the parastatals P.M.C. and L.M.C.

The P.M.C. was given the sole right to import maize and maize meal,^{*3} beans,^{*4} sunflowerseed,^{*5} and peas,^{*6} and to purchase beans and peas^{*7}; while with regard to wheat the monopoly position applied to export and import.^{*8}

The L.M.C. was given one monopoly position only: The Wool and Mohair Trading Regulations 1976 proclaimed the L.M.C. to be the sole buyer and exporter of wool and mohair.

With these regulations, a second control system of agricultural trading developed - this time under patronage of the Ministry of Agriculture - in addition to the agricultural licence. For the trader it means that two procedural steps are to be taken: First he has to apply for an agricultural licence, secondly, in the fields that are monopolized by marketing organizations a designation as agent of the parastatal concerned has to be obtained.

In order to combat the use of false weights and measures, the covert side of price exploitation, the Minister of Agriculture issued the Agricultural Marketing (Weighing of Produce) Regulations 1971, stipulating the obligation for traders to

*1. Agricultural Marketing (Trading) Regulations 1974, regulation 4 (2)
*2. -----, second and third schedule

*3. Agricultural Marketing (Import of Maize and Maize Meal) Regulations 1975, reg. 3

*4. Agricultural Marketing (Beans) Regulations 1975, regulation 4

*5. Agricultural Marketing (Sunflowerseed) Regulations 1975, regulation 4

*6. Agricultural Marketing (Peas) Regulations 1976, regulation 4

*7. Agricultural Marketing (Beans, Peas and Wheat) Regulations 1977, regulation 3

*8. -----, regulations 8 and 10

weigh the product on a legally approved weighing instrument in the presence of the producer. For the other, the over side of the problem, the promulgation of price control regulations was of importance.

The first regulations dated from 1974, when minimum prices to be paid to producers were set by the Minister of Agriculture for maize and grain sorghum, ^{*1} and for wool and mohair. ^{*2} In 1975 the price control was extended to beans, ^{*3} wheat ^{*4} and sunflowerseed; ^{*5} in 1976 to peas. ^{*6}

The minimum prices for all these products were of course adjusted on various occasions during the seventies and eighties.

Legal measures to protect local agricultural supplies were not a phenomenon introduced for the first time in the seventies; as early as 1947 Lesotho protected its maize and maize products through the prohibition of import without a licence. During the sixties and seventies similar regulations were issued for eggs ^{*7} and vegetables. ^{*8} The import of wheat was brought under the control of the P.M.C., by a ruling that imports of wheat were to take place only through orders to the General Manager or agents of the P.M.C.. ^{*9}

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- *1 Agricultural Marketing (Price Control) (Amendment No.2)
Regulations 1974
- *2 Wool and Mohair Trading Regulations 1974, Regulation 5
- *3 Agricultural Marketing (Beans) Regulations 1975,
Regulation 16
- *4 ----- (Wheat) Regulations 1975, Regulations 6 + 9
- *5 ----- (Sunflowerseed) Regulations 1975, 7.6
- *6 ----- (Peas) Regulations 1976, Regulations 6
- *7 +----- (Egg Control) Regulations 1969
- *8 ----- (Trading in Vegetables) Regulations 1975 2
- *9 ----- (Beans, Peas and Wheat (Amendment)
Regulations 1978

Relating the subsidiary legislation reviewed above to the development objectives as laid down in the development plans it can be seen that where the L.M.C. and P.M.C. are concerned far from all the regulations desired by the development plans have been promulgated. Out of all the projections the plans contained for the L.M.C. - this corporation was to have the sole right of marketing livestock, wool and mohair, hides and skins, eggs , poultry and milk, only the marketing of wool and mohair received the required legal backing. With regard to the P.M.C. the number of regulations issued seems more in accordance with the development plans.

Yet, in line with the clear requests of the plans, quite a number of regulations have been issued seeking to improve the preparation of agricultural produce. Although not required by the development plans the Minister of Agriculture introduced the Agricultural Trading Licence to control trading in livestock, hides, skins, wool, mohair and farm produce. Significant subsidiary legislation was issued to fight price exploitation and to protect local agricultural produce.

During the 1980s, legislative action in the field of marketing has not yet been very constructive. As a consequence of the decision to abolish P.M.C. and L.M.C., the Produce Marketing Corporation Act 1973 and the Livestock Marketing Corporation Act 1973 were repealed in 1981.^{*1}

According to the Blueprint (p.20) a new parastatal organization will be established. "The starting point is the merger of the Produce Marketing Corporation (P.M.C.) and Co-op Lesotho, with the incorporation of other units, into an Apex Co-operation body

*1 Produce Marketing Corporation and Livestock Marketing Corporation (Repeal) Act 1981.

which will be responsible for the procurement of inputs, purchasing and marketing, the supply of credit and other services. It will make use of the procurement and marketing infrastructures established by P.M.C., Co-op Lesotho and the Basic Agricultural Services Programme (BASP). Livestock and Livestock products marketing, specifically of meat, milk, eggs, wool and mohair, will also come under the jurisdiction of the Apex Co-operative."

This new institutional framework for marketing has not received legal backing yet.

CHAPTER 3

THE IMPLEMENTATION OF THE LAW:

3.1 Introductory Remarks:

Law making does not necessarily imply the achievement of the purpose for which the law is enacted. Enactment is no more than the first step, many steps in the field of law implementation must then follow. "The differentiation between law application and law making allows government to identify with progressive values, and yet to maintain the status quo" (Brun-Otto Bryde, 1976 P.53).

One aspect of law application is law making; the use that is made by the administration of the regulating power conferred on it by principal legislation. As shown from the previous Chapter the issuing of executive rules has been very limited in the field of land use, resulting in a legislation base narrower than allowed for.

How has the executive used the powers and performed the duties as derived from the legislation in the field of land tenure, land use and marketing, in order to achieve the change that was planned for, and what can be reasonably expected with regard to law implementation in future?

3.2 Law Implementation in the Field of Land Tenure:

Of the powers contained within the Land Act 1973 and the Land Regulations 1974 to allow the Minister of the Interior to influence land allocation little if any use was made: No regulations to control land allocation were promulgated; directions in this respect given to the chiefs were ignored if any given; no experts on land use were appointed on the development committees: On the question why the administration appeared so hesitant to use its regulating

and directing powers a clear answer is difficult to obtain. Of significance (possibly) was the issue of vested interests in that many senior posts within the executive were filled by chiefs. It is clear that the right to administrate the land has been jealously guarded by the chiefs over the years, as shows from the Chieftainship Act 1968: In this Act, the allocation of land was excluded from the power of the Minister of the Interior to give directives with regard to the way chiefs should exercise their powers and perform their duties.*1

With regard to the appointment of 'expert' members on the Land Advisory Boards it must be observed that Development Committees, started off as Land Advisory Boards to the Chiefs, were soon made to deal with other issues as well, under the name Village Development Committees. With that, membership of such Committees became a political issue.

A review of the implementation of the new law regulating land tenure, the Land Act 1979, is perhaps a bit early as the Act only came into operation in June 1980. Yet, it is not promising to see that not much effort has been made of application until now. This in spite of the "prompt implementation" of the Land Act 1979 the donors urged (Report of the Multi-Donor Agricultural Sector Evaluation Mission, P.93). In response to the request the Blueprint made the implementation of the Land Act 1979 and its subsidiary legislation a paramount development objective.

The new rules of inheritance with regard to land that is held under allocation, and for which implementation the Land Regulations 1980 provide the procedure, are not complied

*1 This provision of the Chieftainship Act 1968, as laid down in Section 2 (8) (4), was superseded by the Land Act 1973.

with at all. For ~~this~~ noncompliance several reasons are to be indicated: Because of the very centralised administrative framework, channels of communication between government and people in the rural areas are very poor, as reported on extensively by Van De Geer and Wallis (1980). So far government has allegedly not made an effort to fully inform the people about the new Land Act, although much material was available, and for this reason it is assumed that people in the rural areas are likely not aware of the new inheritance procedures.

However, it is considered doubtful whether improved knowledge will result in improved compliance. Unless undeveloped land is available for allocation, the new law restricts new households' right to be granted farming land; a resource that is highly valued in Lesotho. Spiegel (1980, P.118) describes the 'typical cycle of household development' in Lesotho, in which he points out the importance of land in the various stages a household goes through. Hamnett (1975, P.65) observes that the very many who derive their income from migrant labour mainly, still "rely on the lands their families hold, or hope to obtain, as their ultimate security when they return home. The fact that the land is poor and its productivity low only makes it more precious since there is so little spare production capacity in the nation that those without land can easily become destitute".

The enforcement of the rules is the responsibility of the existing land Committees. As pointed out earlier these Development Committees were established under the Land Regulations 1974, and are for the time being taking the place of the new Land Committees to be established under the Land Act 1979. The Committees appear not to perform this enforcement task, which also makes it doubtful whether they actually exercise their other

functions related to land allocation, and whether the new deprivation grounds for agricultural land are being observed. With 1084 land allocating authorities in the country it is impossible for the administration to exercise the desired control. Besides, because of lack of information on the new Land Act, many chiefs and members of the committees just might not know about the legislative changes. But again, at least as far as the chiefs are concerned, knowledge is not likely to bring about readily acceptance of the new law.

No regulations under the Land Act 1979 have been issued yet as a preliminary step for giving binding ministerial directions on allocation and deprivation of land.

Advanced plans for the establishment of selected agricultural areas are not yet available, and it seems unrealistic to expect them soon. For one thing there is the problem of very serious understaffing. The processing of these areas is quite a heavy burden on the administration: All existing rights are extinguished, and substitute rights (leases) are to be given, either to new or to former occupiers. This implies a survey and valuation of all land holdings as basis for the granting of substitute rights before the area is declared a selected agricultural area; after such declaration the lands are to be restructured, surveyed for the second time for the registration of the new rights, and the landholders are to be provided with lease titles to be able to transfer or sublet the lease. Where previous occupiers are refused substitute rights, reasons must be given and possible appeals are to be processed.

However, this staffing problem - which can be solved in the long run and for which on the short term expatriate assistance may be obtained - seems not to be the most fundamental obstacle to a successful implementation of land reform measures; the structural lack of job opportunities must be considered as such. As pointed out in the foregoing, no farmer in Lesotho will be eager to give up

his land, and will most certainly not do so in absence of an alternative income. As elaborately reported on by Eckert and Mohapi (1980), the gap between labour force and employment opportunities has been widening very substantially over recent years, and the situation is expected to grow more serious in future. Who, under the prevailing economic circumstances (and add to that the political instability) will dare to implement land reform measures based on compulsory dispossession of land and possibly pay the price of great social (and political) unrest? A successful realization of land reform through voluntarily dispossession of land seems - for the same reason - unlikely as well: Lack of job opportunities may prove to be an insurmountable hindrance for land reform.

3.3 Law Implementation in the Field of Land Use:

The legislation base in the field of land use is made up of the Land Husbandry Act 1969, which does not take immediate effect; the Weed Eradication Act 1969, which was never made a working proposition as the required regulations for the appointment of enforcement officials were never promulgated; the Range Management and Grazing Control Regulations 1980. With regard to the implementation of the latter regulations some steps have been taken: The grazing areas have been declared by the chiefs, and demarcation will follow within the next few months. On the basis of an estimated carrying capacity, research to determine the precise stocking rate is being done at present, permits have been granted to stock holders. Grazing in higher numbers than stated in the permits will be accepted for the time being, because local marketing outlets for stock are virtually non-existent as yet.

In spite of the steps taken so far, the question still seems relevant whether a forceful implementation of the Range Management and Grazing Control Regulations - as required by the Blueprint - is to be expected.

The first thing to consider is that the instruments provided

by the Range Management and Grazing Control Regulations 1980 are quite similar to these contained within the Laws of Lerotholi, which proved to be ineffective. For the control of erosion only one new instrument is introduced; the culling of what is referred to in the regulations as 'undesirable stock'. The Laws of Lerotholi proved to be ineffective, as the chiefs, responsible for the implementation, appeared not so very dedicated to that job. A major reason for that was the attitude their subjects displayed, ranging from lack of interest to resistance. Discussing the Laws' instructions and powers relating to the construction and preservation of soil conservation works, grazing control and tillage practices, representatives of the International Labour Organization observed: "The implementation difficulties for these measures have arisen from the lack of interest on the part of the individual landholders (sic!). In a system where the chief is both ruler and representative, it is simply not possible to push people in a direction they are not willing to go" (I.L.O. 1979, P.123).

In the Chieftainship Act 1968, the executive had ^{*1} the instrument to direct the chiefs on their powers and duties with regard to land use as conferred and imposed by the Laws of Lerotholi.^{*2} Refusal of the chief to carry out such direction made him liable to deprivation of all or some of the powers and duties of his office, or to reprimand.^{*3}

However, this instrument to discipline chiefs is not known for its frequent implementation.

The experiences in the past lead inevitably to the question: Are the prospects for effective implementation any brighter in 1980?

*1 With regard to the Range Management and Grazing Control Regulations this instrument may still be implemented for the duties that are the full responsibility of the chiefs.

*2 Chieftainship Act 1968, Section 8 (1) (2)

*3 Chieftainship Act 1968, Section 17 (b) and 18

Ample arguments seem to lead to a negative reply: Under the Range Management and Grazing Control Regulations the chiefs are again to play a crucial role in implementation, and it is difficult to see why they will do better now: The regulations bring about a lot of work for the chiefs, for which they do not receive any extra payment. On top of that, the new law takes away their autonomy with regard to the many duties that are to be performed 'on the advice' of the Agricultural Officer. Sure, the regulations prescribe that the advice of the Agricultural Officer is binding, and non-compliance by the chief creates an offence. But will this make the chief do what he is required to do? Who will enforce chiefly compliance? The Agricultural Officer is definitely not the obvious person; he is supposed to build up a good working relationship with the chief; not to press him. The regulations are silent on this aspect.

Another problem is - again - the shortage of qualified manpower to assist the chiefs with the implementation of the regulations. At present only two Agricultural Officers at district level are available to perform such duties as the determination of the carrying capacity and the advising of chiefs on the closing of grazing areas for purposes of rotational grazing. February 1980 will bring some relief when five well qualified Basotho come back from training in Range Management abroad. However, the remaining shortage will still be substantial.

Worse, however, is that the most basic of the measures to be taken are very likely to cause a lot of social unrest: The regulations aim at the bringing down and control of stock numbers through permits, to be granted by the chiefs. It will be extremely difficult to develop and maintain criteria that are just and do not favour certain powerful groups. In consequence of this permit system, stock for which such a grazing permit is not given is to be culled.

The regulations make the culling the responsibility of Agricultural Officers. But the Minister of Agriculture is likely to think twice before he allows his officers actually to take that responsibility. In 1973, the then Minister of Foreign Affairs, Chief P.N. Peete told Lesotho: "I used to say there are things here in Lesotho which may cause bloodshed (....) if you like to see the Basotho fight (....) try to take their livestock by brute force; then you will see bloodshed". (Lesotho Parliamentary Debates, November 9, 1973).

Finally it must be noted that satisfactory implementation of the Range Management and Grazing Control Regulations 1980 would imply many rules to be observed by farmers, both by land and cattle holders. The day-to-day enforcement of those rules will prove to be very difficult, however. The regular police force, whose presence is rarely visible in grazing areas high up in the mountains, will not do it. Who else is going to do the job is unclear; the regulations do not throw any light.

In contrast to the above, officers in the department of Range Management of the Ministry of Agriculture in Maseru consider the prospects for an effective implementation of the Range Management and Grazing Control Regulations 1980 not so gloomy. According to them the way to go is a long one, but there are bright spots to point at: As yet, the cooperation of the chiefs has been satisfactory. The successful experiments carried out in Thaba-Tseka in the field of range management and livestock improvement may serve as a good example to convince stock owners in Lesotho that pastoral farming can be profitable. The recent drought has caused a very high death rate of livestock, especially of cattle. Regulations under the

Land Husbandry Act 1969 are about to be promulgated which will impose a heavy tax on the importation of stock (M 20 per head of cattle). Together with the decreased number of cattle following the drought this should make destocking much less of a problem.

It should be noted that whenever a decrease in remittances from labour migration occurs, this is likely to affect the issue in terms of both quantity and quality. Discussing the influence of labour migration on agriculture in Lesotho, Huisman, H (1983) observes that the increased financial capacity to buy livestock, occurring in the second half of the seventies, had an immediate effect on purchases. In view of this observation, a decrease in financial capacity will inevitably lead to lower purchases of livestock. Decrease in remittances will make the already pressing need for domestic sources of employment and income even more urgent. This may lead to a change in the prevailing attitude of the Basotho towards cattle, which at present is still considered to be a store of wealth and prestige rather than a production factor.

With regard to the implementation of law in the field of land use, another important question is to be raised: Why did the executive not make more use of its regulating powers under the Land Husbandry Act 1969? Especially in view of the various area based projects of the 1970s promulgation of regulations prescribing what use of the land (crop system, crop pattern) should be made, in line with the development plans, might have been appropriate. A clear answer to that question is hard to obtain. However, there seems to be good reason to doubt whether such regulations would have proved to be effective. Discussing the large injections of foreign expertise and foreign aid in generations of new projects, representatives of the International Labour Office observe (I.L.O., P. 84):

"Ironically, the most elemental needs of the farmers - availability of knowledge and information that is pertinent to this economic and technical situation - have not been met by Government and aid activity". In such a poor environment legislation meant to bring about agricultural change seems bound to be ineffective. Remarkably, while the actual growing of certain crops is not provided with legal support, in the field of marketing the executive issued quite a number of regulations on the export of cash crops from 1974 onwards, apparently in the expectation that sizeable surpluses would become available for export.

3.4 Law Implementation in the Field of Marketing:

In the field of marketing the administration failed to make use of its powers to bring about the satisfactory functioning of L.M.C. and P.M.C. No directions were given to these parastatals; there was no enforcement of the L.M.C. (Amendment) Act 1978, and no controlled sharing of powers and duties with other bodies operating in the same field. "The pattern of the last few years with regard to agricultural marketing has been one of government or parastatal take-over followed by growing problems of management and finance". (I.L.O., 1979 p. 97). "Agricultural marketing in the last decade has been characterized by rapid institutional change. Many new organizations have arisen, multiple ministries have been involved and major responsibilities and functions have been transferred from agency to agency" (Eckert et al, 1980, P. 196). When the L.M.C. and P.M.C. were abolished in 1981, an evaluation of their accomplishments allegedly appeared impossible; the very poor records of the parastatals failed to provide the data.

Implied in the inefficacy of the L.M.C Act and P.M.C. Act is the failure of the subsidiary legislation providing the L.M.C. and P.M.C. with various monopoly positions. The

Wool and Mohair Trading Regulations 1976, giving the L.M.C. its one and only monopoly, were ineffective as early as 1978, when the Livestock Produce Marketing Services (LMPS), part of the marketing division of the Ministry of Agriculture, became the sole marketer of wool and mohair. For the effectiveness of various regulations allowing the P.M.C. monopoly positions, the successful operations of Co-op Lesotho, the second proclaimed monopolist in the field of crop marketing, this time by the Ministry of Cooperatives and Rural Development, proved to be fatal.

With regard to the agricultural trading licence - a system of governmental control over agricultural trading introduced by the Agricultural Marketing (Amendment) Act 1973 and refined by the Agricultural Marketing (Trading) Regulations 1974 - the administration has a feeling that most traders do take the trouble of applying annually for a licence.

However, an effective instrument for control over agricultural trading is by no means provided by this licencing system. Due to a lack of manpower there is no check on compliance with the terms and conditions of the licences, which makes it very difficult for the licensing authority - the Ministry of Commerce and Industries in Maseru - to suspend or cancel licences. But also in notorious cases which are well known to the administration in spite of the lack of control, appropriate action is not taken.

Concerning the legal protection of farmers against price-exploitation the situation is much the same: Compliance with the regulations is not enforced. There is no division within the Ministry of Agriculture assigned with the task of checking on weighing instruments and whether weighing of produce by traders does take place in

the presence of the producer. With regard to the covert side of the problem the administration has the feeling that most traders are inclined to pay the legally required bottom prices to the farmers, but again, there is no check. The regular police force do not consider it part of their task, and the tight manpower situation seems not to allow designation of agricultural officers for this purpose.

The protection of domestic supplies of agricultural produce through legally required import licences for eggs, vegetables wheat and wheater products, maize and maize products appears to be more effective. At least, for wheat and maize that applies since the issue of permits was taken out of the hands of P.M.C. (in 1981) and made the responsibility of the Ministry of Agriculture. The protection of local supplies of vegetables remains unsatisfactorily, as the licensing authority - the Ministry of Agriculture - often is not timely provided with the necessary information that would lead to the refusal of an import licence for certain vegetables.

The various regulations aiming at an improved preparation of wool and mohair and of a number of cash crops before they are exported are only effective with regard to wool and mohair. The qualified manpower to actually implement the grading systems for the crops concerned is not available, and the amount of domestic supplies is too limited to make training worthwhile.

Conclusion:

As pointed out in the introduction, the main objective of the present report is to find an answer to the question: What use has the administration made of the law as a developmental instrument to achieve the objectives in the field of land tenure, land use and marketing, as laid down in the three successive five year development plans?

In answering that question, the report distinguished two aspects; law making and law application.

With regard to law making, the following was observed:

In the field of land tenure the executive has been very slow with the drafting of legislation which was requested by the FFYDP. Admittedly, in the Land Procedure (Amendment) Bill 1973, an (unsuccessful) attempt was made to take the land allocating power from the chiefs, and through the Land Act 1973 and the Land Regulations 1974 legal instruments were made available which were substantial both for the curbing of alleged chiefly misuse of power, and to make allocation of land more in line with the principles of land use planning. However, the profound and wide ranging changes of the traditional land tenure system advocated in the FFYDP were only provided for by the Land Act 1979.

The hesitance of the administration to realize profound substantive changes to the traditional land tenure system seems to a certain degree justified. Several sources point to the fact that during the 1960s and 1970s the traditional land tenure system, as developed under the Laws of Lerotholi, appeared to be less of an impediment to agricultural development than was perceived by those who were responsible for the contents of the FFYDP.

For improved agricultural land use the statutory base has been in existence since 1969, mainly in the Land Husbandry Act 1969. However, the Act allows for the regulation of a great number of aspects of land use by the Minister of Agriculture rather than regulating them itself. Thus, the Act lacks immediate effect, and it was not before 1980 when - during the donor's conference on agriculture - The Range Management and Grazing Control Regulations were promulgated, that legal instruments under the Land Husbandry Act 1969 were actually made available, at least for a number of aspects of improved agricultural land use.

In the meantime the parts of the Laws of Lerotholi dealing

with agricultural land use remained in force, proving themselves ineffective. It should be noted that the instruments provided by these Laws were quite similar to those made available by the Range Management and Grazing Control Regulations 1980. With regard to implementation, however, the authority of the 'modern' administration is strengthened in the regulations.

Concerning marketing the executive appeared less slow in developing the legislation base. In 1973, two parastatal marketing organizations were established through the Livestock Marketing Corporation Act and the Produce Marketing Corporation Act.

Throughout the 1970s the Minister of Agriculture used the regulating power conferred on him by the Agricultural Marketing Act 1967, to give legal support to the transfer of certain aspects of agricultural marketing to these parastatals. Many other aspects of agricultural marketing - licensing of trading; price exploitation of farmers; protection of domestic farm supplies; preparation of agricultural export products - were regulated under the same Act as well.

So by 1980, the executive had succeeded in making available legal instruments supportive to far the greater part of its development objectives in the field of land tenure, land use and marketing.

However, law making is no more than a first step towards achievement of its purposes; many steps in the field of law implementation must then follow.

With regard to law application the present report observed a disappointing performance by the administration:

Concerning land tenure, the executive made little, if any use of its powers contained within the Land Act 1973 and Land Regulations 1974 to direct the chiefs and otherwise to influence land allocation. The issue of vested interests in that many senior posts within the executive are filled by chiefs might have been of significance.

The donors urged prompt implementation of the Land Act 1979, and in response the Blueprint made the implementation of the Land Act 1979 and its subsidiary legislation a paramount development objective. Yet, in spite of this, implementation has been slow. Several reasons for this should be mentioned: The very centralized administrative framework in Lesotho makes communication between government and people in rural areas extremely difficult. This leads in the first place to legal provisions that are at tension with the socio-economic conditions with which the rural population in Lesotho have to cope: The lack of domestic job opportunities, and consequently the importance of land for reasons of both security and subsistence, may prove an insurmountable hindrance for the implementation of certain instruments of the Land Act 1979 which are considered crucial for the achievement of the planned agricultural development. In the second place the lack of communication channels frustrates the proper information of the people on the new land law.

Another constraint posed by the administrative framework is the serious shortage of qualified manpower.

Last but not least there is the continuing hesistance of the administration to direct the chiefs.

With regard to the implementation of the legal instruments as provided by the Range Managment and Grazing Control Regulations 1980 similar constraints can be noted concerning the administrative framework and the control of Chieftainship

In addition to that the social unrest the de-stocking is likely to create must be considered a substantial hindrance to effective implementation.

In the field of marketing it was observed that the executive failed to use its powers to control the parastatal marketing organizations P.M.C. and L.M.C., and otherwise did little to avoid the need for their abolishment in 1981.

Enforcement of regulations dealing with agricultural trading, price-exploitation of farmers and improved preparation of agricultural products for export, appeared to be unsatisfactory.

The lack of manpower, the reluctance to put pressure on influential traders and the low volume of most export products must be held responsible.

The foregoing leads to the final conclusion that although far the greater part of the development objectives in the field of land tenure, land use and marketing have been supported by legislation meant to facilitate the achievement of agricultural development as proposed in three successive development plans, the effectiveness of the law has been very limited so far, mainly because of the great number of constraints posed on implementation. As many of these constraints are of a structural character, the prospects - at least for the nearer future - look depressed.

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Regulations 1975, pp.46

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